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ARLINGTON VA 22203

In re Application of
De Santis et al.
Application No.: 10/590,936
PCT No.: PCT/IT2005/000078
Int. Filing Date: 16 February 2005
Priority Date: 27 February 2004
Attorney Docket No.: 4865-91
For: Anti-Human Tenascin Monoclonal Antibody

DECISION

This is with regard to the "Petition To Withdraw Holding Of Abandonment..." filed on 11 August 2008.

BACKGROUND

This international application was filed on 16 February 2005, designated the United States, and claimed an earliest priority date of 27 February 2004. The International Bureau transmitted a copy of the published international application to the USPTO on 09 September 2005. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 28 August 2006 (since 27 August 2006 was a Sunday). Applicants timely filed *inter alia* the basic national fee on 28 August 2006.

On 29 May 2007, a Notification To Comply With Requirements... (Form PCT/DO/EO/922) was mailed to counsel, requiring the submission of an initial CRF of the sequence listing and a statement that the content of the CRF is identical to that of the written form and, if applicable, contains no new matter.

On 11 July 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Form PCT/DO/EO/922 mailed on 29 May 2007.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment, on the basis of alleged non-receipt of the Notification mailed on 29 May 2007. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner states that "The Notification dated May 29, 2007 was not received by applicant's representatives." This statement satisfies requirement (1).

Petitioner further states that "the undersigned has searched the file jacket and docket records relating to the instant application, and both evidence that the Notification dated May 29, 2007 was not received." This satisfies requirement (2).

Concerning requirement (3), petitioner provides an explanation of the Nixon & Vanderhye docketing system. Petitioner notes that "the computer-based docket record (Exhibit A) for the subject application would have noted receipt of the May 29, 2007 correspondence and its extendible 2-month due date of July 29, 2007. However, as the enclosed screen print of the computer-based docket record for the subject application reveals, no such information was entered therein." However, petitioner has not provided a copy of a record showing *all* applications docketed for response on 30 July 2007 (since 29 July 2007 was a Sunday); instead, Exhibit A appears to pertain only to this application. Petitioner is advised that such a record would be the appropriate "docket record" to satisfy requirement (3).

Petitioner's statement that a sequence listing was filed with the petition is acknowledged.

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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